

NOTICE OF PROPOSED RULEMAKING

Title 15. CRIME PREVENTION AND CORRECTIONS Division 2. BOARD OF PAROLE TERMS CHAPTER 3. PAROLE RELEASE ARTICLE 2. INFORMATION CONSIDERED

New Section 2240
Psychological Risk Assessments

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (Board) proposal to California Code of Regulations (CCR), title 15, section 2240, regarding Psychological Risk Assessments for Life Inmates.

AUTHORITY AND REFERENCE

Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 authorize the Board to adopt the proposed regulations. The new section implements, interprets and makes specific the Board's existing guidelines for the preparation of Psychological Risk Assessments for parole consideration hearings held pursuant to Penal Code Section 3041 and 3041.5.

WRITTEN PUBLIC COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON December 17, 2010, AND WILL CLOSE AT 5:00 P.M. ON January 31, 2011.** In order for the comments to be considered by the Board, they must be submitted in writing to the Board's Contact Person identified in this Notice no later than the close of the comment period.

CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the Proposed Text of the Regulation, or other information upon which the rulemaking is based to:

Anne Cervantes, Regulations Coordinator
Board of Parole Hearings
PO Box 4036
Sacramento, CA 95812-4036
Telephone: (916) 445-5277
Facsimile: (916) 322-3475
E-mail: Anne.Cervantes@cdcr.ca.gov

Note: Substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Anne Cervantes, Regulations Coordinator (916) 445-5277.

If Anne Cervantes is unavailable, please contact Staff Counsel, Phil Reiser at (916) 445-5277.

In any such inquiries, please identify the action by using the Board's regulation control number RN 10-01.

NO PUBLIC HEARING SCHEDULED

The Board has not scheduled a public hearing on this proposed regulatory action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing.

If one were to be scheduled, the purpose of a public hearing would be to receive oral comments about the proposed regulations. It would not be a forum to debate the proposed regulations, and no decision regarding the permanent adoption of the proposed regulations would be rendered at a public hearing. The members of the Board would not be present at a public hearing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code section 12838.4 vests the Board of Parole Hearings (Board) with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code section 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code section 5076.2 requires the Board promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

The new section codifies the Board's existing guidelines for the preparation of Psychological Risk Assessments for parole consideration hearings held pursuant to Penal Code Section 3041 and 3041.5.

This action provides the following:

- Subsection 2240(a) identifies when an inmate will receive a Comprehensive Risk Assessment. It also makes clear that psychological reports prepared before January 1, 2009 are valid for three years, or until used at a hearing that was conducted and completed after January 1, 2009, whichever is earlier.
- Subsection 2240(b) provides that a Comprehensive Risk Assessment will be completed every five years and defines what is generally contained in the report. It contemplates that risk assessment instruments may be used to evaluate an inmate's potential for future violence.

- Subsection 2240(c) provides when a Subsequent Risk Assessment will be prepared and defines what is generally contained in the report. The Subsequent Risk Assessment will predominantly focus on dynamic factors and it will not contain an opinion of the inmate's potential for future violence.
- Subsection 2240(d) provides that the CDCR's inmate appeal process does not apply to the Board's psychological evaluations. The report and its conclusions may be challenged at the hearing. The hearing panel will determine what evidentiary weight to give the report.
- Subsection 2240(e) describes how substantial factual errors in a psychological report will be handled if they are identified by the hearing panel.
- Subsection 2240(f) describes how administrative factual errors in a psychological report will be handled if they are identified by the hearing panel.
- Subsection 2240(g) provides that life inmates who don't reside in California may not receive a risk assessment or other psychological evaluation due to other state's licensing requirements for psychologists and variations in confidentiality laws from state-to-state.
- Subsection 2240(h) specifies that this regulation will not apply to medical parole hearings or applications for sentence recall.

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandates: The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

Fiscal Impact Statement: The Board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None**
- Cost or savings to any state agency: **None**
- Other non-discretionary cost or savings imposed on local agencies: **None**
- Cost or savings in federal funding to the state: **None**

Significant Statewide Adverse Economic Impact on Business: The Board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: The Board has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on Housing Costs: The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

Small Business Determination: The Board has determined that the proposed regulation does not have a significant adverse economic impact on small business because small businesses are not affected by the internal management of State prisons.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 K Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulation), the Proposed Text of the Regulation, Initial Statement of Reasons and Form 399 (Fiscal Impact Statement). Copies of these documents may be obtained by contacting the Board's Contact Person at the address or phone number listed above or by visiting the Board's website at:

http://www.cdcr.ca.gov/BOPH/reg_revisions.html

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the Board's website at http://www.cdcr.ca.gov/BOPH/reg_revisions.html. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained from the Board's Contact Person identified in this Notice or by visiting the Board's website at:

http://www.cdcr.ca.gov/BOPH/reg_revisions.html

****END****